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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 722 (VSB)

5 SAYFULLO HABIBULLAEVIC SAIPOV,

6 Defendant.

Conference

7 -----x

8 New York, N.Y.

9 March 11, 2020

4:08 p.m.

10 Before:

11 HON. VERNON S. BRODERICK,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
Southern District of New York

17 BY: AMANDA L. HOULE

JASON A. RICHMAN

Assistant United States Attorneys

18 FEDERAL DEFENDERS OF NEW YORK INC.

19 Attorneys for Defendant

20 BY: DAVID E. PATTON, ESQ.

SYLVIE J. LEVINE, ESQ.

ANDREW DALACK, ESQ.

21 ROTHMAN, SCHNEIDER, SOLOWAY & STERN, LLP

22 Attorneys for Defendant

23 BY: DAVID M. STERN, ESQ.

24 ALSO PRESENT: AMBER TYREE

Special Agent, FBI

25 PETER SCHRAMMEL

Detective, NYPD/Task Force Officer, FBI

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

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(In open court)

THE COURT: Okay. If I could ask counsel to please identify themselves for the record.

MS. HOULE: Your Honor, it's Amanda Houle and Jason Richman for the government, and with us at counsel table is Amber Tyree and Pete Schrammel from the FBI.

THE COURT: Okay. Good afternoon.

MR. PATTON: Good afternoon, your Honor. David Patton and David Stern, Sylvie Levine, Andrew Dalack for Mr. Saipov, who's waiving his appearance.

THE COURT: Okay. Thank you.

Okay. Where do things currently stand, Ms. Houle?

MS. HOULE: Since we last appeared before your Honor, the defense asked for the government to lay out what the conditions would be of a video deposition. We did do that. We sent over information about who would be asking the questions, where they would occur, the fact that defense would be able to participate via a remote connection, that the U.S. Attorney's Office would do the same, that would be audio and video, and defense counsel asked some follow-up questions, to which the government responded. I'll let defense counsel speak for themselves, but I understand that their final answer is that they will not participate in the depositions next week.

THE COURT: Okay. All right. Mr. Patton.

MR. PATTON: That's the bottom line.

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1 THE COURT: Okay.

2 MR. PATTON: For the moment. We understood that the
3 immediate concern was sending agents over to Uzbekistan. We've
4 told them they should not do that. We're not ready to proceed
5 next week. We do think that there are potential ways to do
6 this entirely remotely. We've asked the government to look
7 into one issue regarding whether or not we would have to follow
8 all the strictures of the Uzbek requirements if nobody was
9 there, if there were no agents, no government officials, we
10 weren't there, because we've talked to an Uzbek lawyer who
11 thinks that that's really what triggers those requirements is
12 the actual presence in country of a foreign delegation. So
13 we'd like to look into that possibility.

14 THE COURT: Yeah.

15 MR. PATTON: We'd also like to continue looking into
16 the possibility of our being able to remotely prepare
17 witnesses. Part of that is the technology issues. The
18 government has offered to have us talk to one of their agents
19 about what's truly encrypted and what's not and what's really
20 private and what's not.

21 THE COURT: Yeah.

22 MR. PATTON: I will say they seem more confident than
23 we are that there is a way to be certain about that via video.
24 My separate concern is whether or not our witnesses were going
25 to believe that, which is the more significant issue.

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1 THE COURT: Yes.

2 MR. PATTON: And then beyond all of this, we've just
3 been talking more and more. We are likely to come to the Court
4 very soon with an adjournment request, and this will be one of
5 several reasons, and so we think there are reasons why, if the
6 adjournment request is dealt with sooner rather than later,
7 that may clear up some issues and also may make any possible
8 adjournment easier to deal with, if it's tackled sooner rather
9 than later. So we just put that on the Court's radar screen.
10 And where are we? End of the day Wednesday? We would hope to
11 get your Honor something by Friday.

12 THE COURT: Okay. Yes, Ms. Houle.

13 MS. HOULE: Just saying, your Honor, that where this
14 leaves us is that the government has made available a location,
15 a facility for these depositions to be conducted next week,
16 with approval from the Uzbek government. This is against the
17 backdrop of the defense being aware that these depositions and
18 these witnesses would need to be prepared for months now, and
19 the government would strongly oppose any adjournment based on
20 the defense's decision to not travel or participate remotely in
21 these depositions next week.

22 THE COURT: Okay. Look, I understand. Look, I don't
23 know, at the end of the day, faced with, undoubtedly, if this
24 goes to trial and then someone else has to look at it at the
25 end of the day on a different floor in this building, what

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1 views they would take about any of this. It's, in a way,
2 uncharted territory, but I have my suspicions.

3 So I guess what I would say is the following to
4 counsel. I mean, it's running the risk that the bureau, if in
5 fact things clear up, that they're not going to be able to get
6 approval to go over to Uzbekistan or overseas just generally.
7 I also think there is a risk -- and I don't know whether the
8 travel by the agents would be considered official. In other
9 words, I guess the government, as I understand it, is
10 contemplating Level 3 restrictions in travel for Europe as a
11 general matter. They haven't said. It hasn't been decided
12 yet. But in any event, the defense has indicated they're not
13 going to participate in that, and I don't know what the end
14 result would be, but I think you should absolutely, Mr. Patton,
15 pursue other options that might be available. I understand
16 that in short order I might be getting a request to adjourn the
17 trial. I'm not sure how the next week or so may shed some
18 additional light on that.

19 I know I said I was going to speak to the jury clerk.
20 I did not have an opportunity to do that since the time we last
21 saw each other. And I apologize for the delay. I was
22 finishing up on another conference call.

23 So I guess -- and look, I don't necessarily get --
24 Mr. Patton.

25 MR. PATTON: Just on that last point, our intention

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1 was to try to get the Court something quickly in the interest
2 of all parties being able to address some of these things. But
3 if the Court thinks that it makes sense to see how things play
4 out for an additional day or two, Monday, Tuesday, Wednesday,
5 we're happy to --

6 THE COURT: You were thinking this week of getting me
7 something.

8 MR. PATTON: I'm sorry?

9 THE COURT: You were thinking this week you were going
10 to get me a request.

11 MR. PATTON: We were, but I've been on the fence about
12 the timing of doing any of that just because of how fast paced
13 all this is moving. And I just had a meeting -- I'm having a
14 similar one in the Southern District tomorrow -- where things
15 are being discussed that -- it's surreal what's being discussed
16 right now in those meetings, about contingencies for entirely
17 shutting down the courthouse and how we might deal with that
18 possibility.

19 THE COURT: Yeah.

20 MR. PATTON: So, you know, I think we have some
21 concerns that we're happy to get to the Court by Friday. If
22 the Court would like to see how things play out a little bit --

23 THE COURT: No. I think a couple of things. If you
24 get me the letter on Friday, the government's going to take
25 some time to respond. I think things will develop over the

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1 next few days, next week or so, that gives us a clearer picture
2 of what's going to happen in terms of the courthouse itself. I
3 think my sense is that for both districts, they want to keep
4 everything open as long as we possibly can, but there are
5 things that intrude on that, including if we're unsuccessful in
6 guarding against folks who may have the virus, you know, coming
7 into the facility, and then what would happen at that point,
8 how many folks would they have contact with and the like.

9 So I don't have a problem, Mr. Patton, if you were
10 going to submit something by Friday. Should I assume that
11 that's the case, Mr. Patton?

12 MR. PATTON: We will.

13 THE COURT: And then I'll just ask -- and obviously
14 the government doesn't know the contents of it, but would
15 sometime early to mid next week, would that be a sufficient
16 amount of time?

17 MS. HOULE: If we could have till end of day Tuesday,
18 your Honor.

19 THE COURT: Sure. That's fine.

20 And obviously if you're in discussions, obviously,
21 among the various folks that need to be consulted from the
22 bureau to folks in the executive staff at the U.S. Attorney's
23 Office and anybody else, if you need additional time, just let
24 me know.

25 MS. HOULE: Thank you, your Honor.

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1 THE COURT: And also, what does everybody envision
2 about, you know, when this thing would actually -- because I
3 have no idea when -- I'll wait to see what the letters to me
4 say about that and we can proceed from there.

5 So, Agent, you don't have to worry about flying
6 overseas, and I'm sure which would be coach or less than coach
7 on the government's dime. And we'll see where things go from
8 there.

9 I'm hopeful that, you know, even if there's this
10 request coming, that we're going to try and move forward on the
11 Rule 15 depositions, if we can figure out a way to do it that
12 makes sense, just because I don't know how long it might be,
13 you know, where we're not able to actually send folks overseas.

14 So I'd like the parties to continue, even regardless
15 of the request, to proceed to actually do the work, and I may
16 start socializing the folks in the courthouse, the jury folks,
17 to this possibility, because obviously they did a tremendous
18 amount of work in arranging for the questionnaires and the
19 like.

20 Mr. Patton.

21 MR. PATTON: We'll put this in our papers. Again,
22 we've been talking about this. One of the things we've talked
23 about is if arrangements for an adjournment had to be made,
24 that things could go out to the folks who filled out the
25 questionnaires to see about their availability during different

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1 time slots so we don't have to go through all that again.

2 THE COURT: And look, that absolutely occurred to me.
3 In terms of prevailing upon folks, we've already asked a lot of
4 the folks. And look, I don't necessarily have anything that
5 jumps to mind right now that would object to that other than it
6 is an incredible, you know, imposition.

7 Having said that, you know, it seems, as we
8 experienced, it seemed to me -- and I have not looked at the
9 questionnaires, but it seemed as if those folks were very
10 conscientious in filling those forms out and stayed around, you
11 know, well past the time that the folks in the jury room were
12 basically, you know, scheduled to head home. So I wouldn't be
13 surprised if people, you know, want to, if they can, to stick
14 by, but we'll see. And I'll start at least having the
15 conversation with the jury folks about what the options could
16 be and what is doable and what may not be. Again, I'm not at
17 all saying that anything's going to be put off.

18 Okay. Is there anything else that we need to deal
19 with right now, from the government?

20 MS. HOULE: No. Thank you, your Honor.

21 THE COURT: All right. From the defense.

22 MR. PATTON: No, your Honor. Thank you.

23 THE COURT: Okay. I'll have to think about if there
24 are other things, but I'll look forward to getting a letter on
25 Friday and then the government's response by the close of

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1 business Tuesday. All right?

2 Thank you very much. We'll stand adjourned.

3 ALL COUNSEL: Thank you.

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